

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-BB

RIO CHAMA STREAM SYSTEM

Section 2: Ojo Caliente

Subfile No. 36.4-A

MOTION TO AMEND SUBFILE ORDER FILED AUGUST 6, 1975

COMES NOW the Plaintiff State of New Mexico, *ex rel.* State Engineer, and requests the Court to enter its order amending the subfile order entered August 6, 1975 (Docket No. 2739-40) in connection with the water rights of Ojo Caliente Mineral Springs, Co., and subfile 36.4-A, and in support of this motion Plaintiff states the following:

1. On August 6, 1975, the Court entered an Order that adjudicated the water rights of Ojo Caliente Mineral Springs, Co., in subfile 36.4-A.
2. The Order entered August 6, 1975 included a diversion amount of 2.8 acre-feet per year from five (5) springs. *See* Order filed August 6, 1975, ¶ I (B). The total discharge from these springs has been diverted and used for hot springs purposes for many years, and this amount is significantly in excess of the diversion amount recognized in the Order entered August 6, 1975.
3. Ojo Caliente Holdings, Inc., is the successor-in-interest to Ojo Caliente Mineral Springs, Co., and the owner of the Ojo Caliente Hot Springs Resort where the water rights described above are used and located.

4. The State agrees with Ojo Caliente Holdings, Inc., that the Order entered August 6, 1975 in subfile 36.4-A should be amended as follows:

Paragraph I (B) of the Order entered August 6, 1975 should be deleted;

The following paragraph III should be added to the Order:

III. Purpose – Hot Springs Use (including bathing, heating and medicinal uses)

A. State Engineer File No.: 02263
Priority: September 11, 1793

Points of Diversion:

Spring No. 1, located on the New Mexico State Plane Coordinate System Central Zone, as follows: X = 558,150 and Y = 1,930,140.

Spring No. 2, located on the New Mexico State Plane Coordinate System Central Zone, as follows: X = 558,170 and Y = 1,930,120.

Spring No. 3, located on the New Mexico State Plane Coordinate System Central Zone, as follows: X = 558,200 and Y = 1,930,180.

Spring No. 4, located on the New Mexico State Plane Coordinate System Central Zone, as follows: X = 558,220 and Y = 1,930,090.

Spring No. 5, located on the New Mexico State Plane Coordinate System Central Zone, as follows: X = 558,130 and Y = 1,930,140.

Within the Ojo Caliente Grant, as shown on hydrographic survey map sheet No. 36.

Amount of Water: Amount of water necessary for bathing, heating and medicinal purposes not to exceed 0.52 acre-feet consumptive use per year; the remainder of the waters diverted shall be returned undiminished in quantity and quality to the natural water course of the Rio Chama Stream System.

5. Counsel for Ojo Caliente Holdings, Inc., Katherine W. Hall, supports the granting of this motion.

WHEREFORE the Plaintiff State of New Mexico, respectfully requests that the Court enter an Order that amends the Order filed August 6, 1975 (Docket No. 2739-40) in subfile 36.4-A as described above in paragraph 4 of this motion.

Respectfully submitted,

/s/ Ed Newville
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of March, 2008 I filed the foregoing electronically through the CM/ECF system which caused the parties listed on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail, and served the following non-CM/ECF Participant in the manner indicated:

via first class mail, postage prepaid addressed as follows:

Katherine W. Hall
460 St. Michael's Drive # 603
Santa Fe, NM 87505-7652

/s/ Ed Newville
EDWARD G. NEWVILLE